

FCC Received July 2, 1993 @ 3:35 p.m.
Abna G. Bradshaw

ORIGINAL

11

TRANSCRIPT OF PROCEEDINGS RECEIVED 1

Before the
FEDERAL COMMUNICATIONS COMMISSION
 Washington, D.C. 20554

-----)
 In Re Applications of:)

RIVERTOWN COMMUNICATIONS CO. INC.)
 SAMPLE BROADCASTING COMPANY, L.P.)

MM Docket No. 92-316

For Construction Permit for a)
 New FM Station on Channel 282C3)

Eldon, Iowa)
 -----)

The above-entitled matter came on for hearing pursuant to notice before John M. Frysiak, Administrative Law Judge, at 2000 L Street, N.W., Washington, D.C., in Courtroom No. 4, on Tuesday, June 22, 1993, at 10:00 a.m.

APPEARANCES:

On behalf of the Rivertown Communications Company, Inc.:

DONALD E. WARD, Esquire
 1200 Pennsylvania Avenue, N.W.
 Fourth Floor
 Washington, D.C. 20004

On behalf of Sample Broadcasting Co., L.P.:

JERROLD MILLER, Esquire
 JOHN S. NEELY, Esquire
 Miller and Miller P.C.
 1990 M. Street, N.W., Suite 760
 Washington, D.C. 20036-3404

I N D E X

1					
2	<u>Witness</u>	<u>Direct</u>	<u>Cross</u>	<u>Redirect</u>	<u>Recross</u>
3	Ellen M. Bowen				
4	By Mr. Ward	45		68	

P R O C E E D I N G S

(10:00 a.m.)

1 JUDGE FRYSIAK: This is a hearing on the
2 applications for Eldon, Iowa. May we note your appearances?

3 MR. WARD: For Rivertown Communications Company,
4 Donald E. Ward.

5 MR. NEELY: For Sample Broadcasting Company, L.P.,
6 John Neely and Jerrold Miller, with Miller and Miller, P.C.

7 JUDGE FRYSIAK: Thank you very much. Any
8 preliminary matters?

9 MR. WARD: Just -- I have one preliminary matter,
10 Your Honor. We took the deposition of Mark McVey on, on May
11 10, 198-- 1993, and I believe the, the reporting service sent
12 him a transcript of that deposition about two weeks
13 thereafter, which is, you know, about four weeks ago. I
14 called the reporting service yesterday to see if -- what had
15 happened, because I had seen no evidence that it had been
16 returned and filed with the secretary. And I was told that
17 they had checked with -- after my call, they checked with Mr.
18 Miller who advised Mr. McVey was coming to town and they
19 expected to have it signed and returned imminently. I just
20 wanted to know if that was -- what, what the status of it is
21 as of today?

22 MR. MILLER: Mr. McVey has completed his review, has
23 found a few minor typographical errors or changes that have to
24 be made, and that -- it will be signed and returned to the
25

1 reporting company before the end of the week.

2 MR. WARD: Will it, will it be -- I guess my
3 question is, I would like to have it -- I would like to know
4 what, what his erratum looks like and I'd like to know that he
5 has signed it before I cross-examine him. Otherwise, it's
6 kind of in a limbo state.

7 MR. MILLER: Let, let me suggest that if you have
8 need to make reference to the deposition, you can ask him if
9 he had -- made any corrections to the particular portion that
10 you want to refer to and he will at that point indicate
11 whether he has or not. I think they're just in the, in the
12 nature of typographical errors. One place that he pointed out
13 to me, the reporting company wrote Melvin instead of Eldon.
14 It's, it's matters like, like that rather than --

1 objection to, to my approach that if there's a particular
2 section --

3 MR. WARD: Well, I, I doubt we're going to hear Mr.
4 McVey today, so -- but I would urge that he -- that with the
5 secretarial assistance of your office, that his errata would
6 be, be typed and be available to me before he is put on the
7 stand as a witness, that's all

1 MR. NEELY: None from me, Your Honor.

2 JUDGE FRYSIK: All right. Let's begin. We'll
3 proceed in docket order. Rivertown is first, Mr. Ward.

4 MR. WARD: Ms. Bowen, will you come up to the table
5 there and take a -- yes. At this point, I'm calling Ellen M.
6 Bowen.

7 JUDGE FRYSIK: Before you sit down, let me take
8 your oath. Please raise your right hand.
9 Whereupon,

10 ELLEN M. BOWEN

11 having been first duly sworn, was called as a witness herein

12 and was examined and testified as follows:

1 is that statement true and accurate?

2 A Yes, it is.

3 MR. WARD: Ms. Bowen is available for cross-
4 examination, Your Honor.

5 JUDGE FRYSIAK: All right. Thank you, Mr. Ward.
6 Who's going to do the --

7 MR. NEELY: I'll cross-examine Ms. Bowen, Your
8 Honor.

9 CROSS-EXAMINATION

10 BY MR. NEELY:

11 Q Ms. Bowen, we met in April. I took your deposition
12 in, in Eldon. Again, my name is John Neely. I'll be asking
13 you some questions this morning. If at any time you don't
14 understand my question or a word that I'm using, you'd like
15 further explanation, please feel free to ask me to restate or
16 rephrase or to explain my question. Are you currently on any,
17 any medication or under disability which would impair your
18 memory?

19 A No.

20 Q Ms. Bowen, does Rivertown have a local attorney in
21 Iowa who helps with corporate matters?

22 A Yes.

23 Q And who is he, or she?

24 A Well, I -- we deal with Mr. Miller in Libertyville.

25 Q Would that be David Miller?

1 A Yes.

2 Q You never spoke with David Miller, did you? With
3 regard to the Rivertown application?

4 A No, I haven't.

5 Q David Brown has had all of the dealings with Mr.
6 Miller? Is that correct?

7 A Yes, he has.

8 Q Do you know whether Rivertown has any Articles of
9 Incorporation?

10 A Yes, we do.

11 Q Let the record reflect that I'm showing the witness
12 a copy of the Articles of Incorporation of Rivertown
13 Communications Company, Inc., which were filed with the --
14 received by the Secretary of the State of Iowa on August 21st,
15 1991.

16 A Yes.

17 Q Would you review that document, please? Have you
18 seen this document before?

19 A Yes, I have.

20 Q When was the first time that you saw this document,
21 in, in its completed form as it's before you today?

22 A Shortly after it was prepared.

23 Q And approximately when would that have been?

24 A It could have been in August or it could have been
25 in September.

1 Q Of what year?

2 A '91.

3 Q You never reviewed any previous drafts of
4 Rivertown's Articles of Incorporation, did you?

1 tower site.

2 Q Helped him? Who would that be?

3 A Dave -- find the tower site.

4 Q David Brown?

5 A Yes. I just mean none as an employee right now. As

6 a, you know, permanent employee.

7 Q Have you ever spoken with Ben Evans about the

8 Rivertown application?

9 A No, I haven't.

10 Q You recall having the, the deposition with, with me

11 back in April?

12 A Yes.

13 Q Until the day before that deposition, had you had

14 any opportunity to speak with Donald Ward, your communication

15 -- Rivertown's communications counsel?

16 A Before the deposition?

17 Q Yes, ma'am.

18 A Yes.

19 Q The day before the deposition or -- when would that

20 have been?

21 A Yes, the day before.

22 Q That was the first time you spoke with Mr. Ward?

23 A Yes.

24 Q Do you know what the source of funding is for the

25 Rivertown station?

1 A We have some loans.

2 Q And do you know -- and who -- from whom? From what
3 source?

4 A John Pritchard's made a loan to the company and my
5 husband is willing to make a loan and Dave has made a loan.
6 Dave Brown.

7 Q Is your husband in the hearing room here today?

8 A Yes, he is.

9 Q You say Mr., Mr. Pritchard has made a loan? Has
10 already made his loan to the corporation? Is that what your
11 -- your testimony?

12 A He's made part of it.

13 Q So he has agreed to make a loan and he has already
14 advanced some of those funds?

15 A Yes.

16 Q Who arranged for Mr. Pritchard to provide financing
17 to Rivertown?

18 A Dave spoke with him.

19 Q Dave did? Did you have any discussions with Mr.
20 Pritchard regarding his setting up the financing?

21 A No, I just let Dave handle it. He discussed it with
22 me and I said that it would be fine if he handled all aspects
23 of it.

24 Q All aspects of, of what?

25 A Arranging a loan.

1 | Q Does Rivertown have a corporate checking account? |

2 | A Yes, we do. |

3 | Q Would Mr. Prit-- you say Mr. Pritchard has already |

1 cash or check?

2 A Check.

3 Q And was that money from Mr. Pritchard a gift or a
4 loan?

5 A A loan.

6 Q And how do you know it to be a loan?

7 A There -- well, they even -- you know, an agreement
8 has been signed and he wouldn't give it as a gift. He would
9 want something in return. I mean, he would not want to throw
10 his money away. That's why I'm saying that.

11 Q Are you -- did you talk with Mr. Pritchard and ask
12 him if it was a gift or a loan?

13 JUDGE FRYSIK: Well, she referred to an agreement.
14 You might ask her about the agreement.

15 BY MR. NEELY:

16 Q The adv-- well, the advance -- this initial advance
17 of, of money.

18 A I'm sorry. What do you mean?

19 Q Well, did Mr. Pritchard execute -- or did, did
20 Rivertown execute a promissory note for this -- for the money?

21 A Yes. There is an agreement that has been typed up
22 and signed.

23 Q What -- is that a loan agreement?

24 A Yes.

25 Q All right. But was there a note? Did Mr. -- did

1 Rivertown execute a note specifically for the money which has
2 been advanced and deposited into the, the Rivertown checking
3 account.

4 A All I -- I mean, there's been a, a piece of paper
5 saying -- typed up and signed saying that we agree to pay back
6 to his terms.

7 Q That would be a loan letter. What, what --

8 MR. WARD: Objection, Your Honor. That's what I --
9 I think she's adequately described a promissory note agreement
10 and to characterize it as a loan letter is mischaracterizing

1 | referred to as having received from Mr. Pritchard, was that
2 | made pursuant to the agreement you had with him?

3 |

1 signed agreement, was that made before or after the. the funds!

1 JUDGE FRYSIAK: Well, the particular question he
2 asked is -- the particular act -- question that he asked,
3 whether she is aware of the terms of the loan, is a proper
4 question, so I'll overrule your objection.

5 MR. WARD: Okay. Thank you. I think you're right.

6 WITNESS: Okay. I, I believe that, if I recall it
7 right, the -- we are to start paying back the loan --

8 JUDGE FRYSIAK: No, no. He asked you whether you
9 were familiar with the terms. Are you or are you not?

10 WITNESS: Yes.

11 JUDGE FRYSIAK: Okay. Next question.

12 MR. NEELY: When did you first become familiar with
13 the terms?

14 WITNESS: Well, Dave, you know, he told me briefly
15 what the main -- what the terms were basically and then later
16 I looked at the document and looked at it further.

17 MR. NEELY: When --

18 JUDGE FRYSIAK: I guess his point was whether you
19 were familiar with the terms before the --

20 WITNESS: The loan?

21 JUDGE FRYSIAK: -- before the agreement was signed.
22 That's all he -- I guess he wants to know.

23 WITNESS: Yes.

24 BY MR. NEELY:

25 Q You were familiar with the terms of the loan from

1 Mr. Pritchard before the agreement was signed?

2 A Sort -- well, through discussion.

3 Q You testified that you thought Mr. Pritchard, the
4 money that he has advanced out of his promised loan, you
5 testified earlier that you believed it to be a loan. When did
6 you first discover that that was -- when did you first find
7 out whether it was a loan or a gift?

8 A When we discussed forming the corporation.

9 Q That would have been sometime in 1991?

10 A Yes.

11 Q You say you recall giving your deposition testimony
12 in, in Eldon on April the 2nd, 1993. I'm going to show you
13 page 35 and 3-- pages 35 and 36 of your deposition testimony.
14 Have you reviewed the transcript of your deposition testimony
15 previously?

16 A No. I -- well, I mean, I reviewed it after it was
17 prepared -- typed.

18 Q You reviewed it earlier than -- before today?

19 A Just shortly --

20 Q You read it?

21 A -- after it was prepared.

22 Q All right. I would -- let the record reflect I'm
23 showing the witness page 35 of her deposition testimony and I
24 would -- asking her to re-- I'm reading for the record page,
25 page 35, line 17, continuing through to page 36, line 1

1 Question: Was that check from Mr. Pritchard, was
2 that a gift or a loan? Answer: A loan.

3 (Question:) Do you know the terms of that loan?

4 Answer: No.

5 (Question:) Do you know -- how do you know that
6 it's a loan. Answer: Well, I would -- I don't think he would
7 just give it. No.

8 Question: So you're assuming that it's a loan?

9 Answer: Yes.

10 Did I read those accurately?

11 A Yes.

12 Q Do you have any personal responsibility -- well, you
13 mentioned that your -- Rivertown will be getting money from
14 Mr. Pritchard, from David Bowen, and from David Brown.

15 A Um-hum.

16 Q Do you have any personal responsibility for
17 repayment of any amounts that may be loaned to the
18 corporation?

19 A Well, the, the corporation has that responsibility.

20 Q But you do not? Individually?

21 A Well, as I understand it, the corporation is liable.

22 Q And you testified earlier that the, the only money
23 that you have given to the corporation was in payment for your
24 stock?

25 A At this point.

- 1 Q And that was \$45?
- 2 A Yes.
- 3 Q You -- we mentioned Rivertown's checking account
- 4 earlier. Have you ever physically, personally made a deposit
- 5 into that account?
- 6 A I deposit, you know, all the money in the bank. The
- 7 money is given to me and then I deposit it.
- 8 Q Okay. Have you made all the deposits to that
- 9 account?
- 10 A Not all of them, but most.
- 11 Q Who else might have made a deposit into that
- 12 account?
- 13 A Dave Brown.
- 14 Q Anyone else?
- 15 A No.
- 16 Q I'd like to show you a deposit ticket and ask you if
- 17 you recognize this?
- 18 A Yes.
- 19 Q Do -- let the record reflect that I'm showing the
- 20 witness a -- well, I'll characterize as a deposit ticket for
- 21 Rivertown Communications Company, Inc., to the Iowa State Bank
- 22 dated October 21, 1991. This deposit ticket has the name
- 23 David W. Brown on that. Is that correct?
- 24 A Um-hum.
- 25 Q What does that indicate as far as you know?

1 A That it was his name on the check that I deposited.
2 JUDGE FRYSIAK: I, I can't hear you. What?
3 WITNESS: It was his name. That was the name of the
4 person --
5 JUDGE FRYSIAK: Who made the deposit?
6 WITNESS: Well, no. I made the deposit, but where I
7 work it's the custom to write who -- the name of the person on
8 the check.
9 JUDGE FRYSIAK: I see.
10 BY MR. NEELY:
11 Q The person who signed the check?
12 A Well, the person whose funds this was coming from.
13 Q Okay. And is that your handwriting? Did you fill
14 this one out?
15 A Yes.
16 Q Fill out this deposit ticket?
17 A Yes.
18 Q As far as you know, the bank generally -- as far as
19 you know, the bank generally requires that deposits be made in
20 this fashion?
21 MR. WARD: Objection to that. What, what fashion do
22 you mean?
23 MR. NEELY: What we see before us on this document.
24 With the --
25 MR. WARD: You mean would it require a deposit slip?

1 Of course --

2 BY MR. NEELY:

3 Q With the name, with the name of the --

4 A That is the -- it's the custom --

5 Q That's your custom?

6 A -- at Excel. That's --

7 Q Okay.

8 A I thought well, maybe, I should do it that way.

9 Q All right. I'd like to show you another deposit

10 ticket that's dated October the 7th, 1991. Is this a deposit

11 ticket for the Rivertown Corporation account?

12 A Yes.

13 Q Have you see this deposit ticket before?

14 A Yes, I've seen it.

15 Q Do you recognize the handwriting on this ticket?

16 A It's not mine.

17 Q Do you know whose it is?

18 A No. I would assume it's probably the clerk at the

19 bank.

20 Q The teller?

21 A But I don't know. But I would assume that's who it

22 is.

23 Q Would you read for the record the two names that

24 appear on this ticket?

25 A Dave Bowen and Dave Brown.

1 Q Um-hum.

2 A But the reason she put Dave Bowen is the checks say
3 Dave Bowen or Ellen Bowen. And people always take the man's
4 name over the woman's.

5 Q Did you ask the teller about that?

6 A I was -- I didn't -- I wasn't there at the time, I
7 guess. I mean, I don't recall the exact day that I made the
8 check out. If you would look at the check, I signed it.

9 Q Does Rivertown have a construction and operating
10 budget?

11 A Yes, we do.

12 Q Did you provide -- have you, have you seen that
13 budget?

14 A Yes.

15 Q Did you provide any of the numbers that were
16 included in that budget?

17 A No, not the numbers.

18 Q Did you have any questions as to any of the numbers
19 that were included on that budget report?

20 A No, I trust Dave's judgment.

21 Q Dave prepared the budget?

22 A Yes.

23 Q Do you know where the tower site is to be located
24 for Rivertown's proposed station?

25 A Yes. It's near Eldon -- I mean, I'm sorry. It's

1 more near Floris.

2 JUDGE FRYSIAK: Florence, did you say?

3 WITNESS: Floris.

4 JUDGE FRYSIAK: Could you spell it?

5 WITNESS: F-L-O-R-I-S.

6 JUDGE FRYSIAK: Thank you.

7 BY MR. NEELY:

8 Q Have you ever seen Rivertown's tower site?

9 A I've driven by it.

10 Q When did you drive by it?

11 A About a month ago, I think.

12 Q Does Rivertown propose to buy or lease its tower
13 site?

14 A Lease.

15 Q Do you know who currently owns the property?

16 A Yes. Dave Benson.

17 Q He came to me earlier with Mr. Benson about the tower